

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

CHRISTI MORRELL,

v.
Plaintiff,

COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION,

Case No. 2:19-cv-00765-JCM-BNW

ORDER

Presently before the court is plaintiff's application to proceed *in forma pauperis* (ECF No. 1). Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma pauperis* will be granted.

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, file to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In considering whether the complaint is sufficient to state a claim, all allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *Wyler Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.

1 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
2 Unless it is clear the complaint's deficiencies could not be cured through amendment, a plaintiff
3 should be given leave to amend the complaint with notice regarding the complaint's deficiencies.
4 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

5 If a plaintiff's complaint challenges a decision by the Social Security Administration
6 ("SSA"), before filing a lawsuit, the plaintiff must exhaust administrative remedies. *See* 42
7 U.S.C. § 405(g); *see also* *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per
8 curiam) ("Section 405(g) provides that a civil action may be brought only after (1) the claimant
9 has been party to a hearing held by the Secretary, and (2) the Secretary has made a final decision
10 on the claim"). Generally, if the SSA denies a claimant's application for disability benefits, the
11 claimant may request reconsideration of the decision. If the claim is denied at the reconsideration
12 level, a claimant may request a hearing before an administrative law judge ("ALJ"). If the ALJ
13 denies the claim, a claimant may request review of the decision by the Appeals Council. If the
14 Appeals Council declines to review the ALJ's decision, a claimant may then request judicial
15 review. *See generally* 20 C.F.R. §§ 404, 416.

16 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of a
17 SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.*
18 An action for judicial review of a determination by the SSA must be brought "in the district court
19 of the United States for the judicial district in which the plaintiff resides." *Id.* The complaint
20 should state the nature of plaintiff's disability, when plaintiff claims he became disabled, and
21 when and how he exhausted his administrative remedies. The complaint should also contain a
22 plain, short, and concise statement identifying the nature of plaintiff's disagreement with the
23 determination made by the Social Security Administration and show that plaintiff is entitled to
24 relief. A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted
25 his administrative remedies and timely filed a civil action. However, judicial review of the
26 Commissioner's decision to deny benefits is limited to determining: (a) whether there is
27 substantial evidence in the record as a whole to support the findings of the Commissioner; and (b)

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1 whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security*
2 *Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

3 Here, Plaintiff alleges that on August 9, 2018, after a hearing, the Administrative Law
4 Judge (ALJ) denied Plaintiff's claim for disability benefits. Plaintiff further alleges that on
5 August 14, 2018, she requested that the Appeals Council review the decision of the ALJ. Finally,
6 Plaintiff alleges that on February 28, 2018, the Appeals Council denied her request for review,
7 and, at that time, the ALJ's decision became the Commissioner's final decision. There appears to
8 be a typographical error in the date that the Appeals Council denied Plaintiff's request for review,
9 as the date that the Appeals Council denied Plaintiff's request for review could not be before
10 Plaintiff filed her request for review (and before the ALJ hearing). Assuming Plaintiff intended to
11 write February 28, 2019, the complaint in this case was filed 64 days later (on May 3, 2019) and
12 is timely. *See* 42 U.S.C. § 405(g) (civil action may be commenced within 60 days after the
13 Appeals Council's decision is mailed); 20 C.F.R. § 422.210(c) ("mailing" is construed as the date
14 on which the notice "is received by the individual," which is "presumed to be five days after the
15 date of such notice, unless there is a reasonable showing to the contrary."). Further, it appears that
16 Plaintiff exhausted her administrative remedies, and the complaint includes facts sufficient to
17 state a claim for relief.

18 Based on the foregoing and good cause appearing therefore,

19 IT IS ORDERED that:

20 1. Plaintiff's request to proceed *in forma pauperis* is GRANTED. Plaintiff will not
21 be required to pay the filing fee of \$400.00.

22 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
23 prepayment of any additional fees or costs or giving security for them. This order granting leave
24 to proceed *in forma pauperis* does not extend to the issuance of subpoenas at government
25 expense.

26 3. The Clerk of Court must file the complaint.

27 4. The Clerk of the Court must serve the Commissioner of the Social Security
28 Administration by sending a copy of the summons and complaint by certified mail to: (1) Office

1 of Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St., Suite 899,
2 San Francisco, California 94105-1545; and (2) the Attorney General of the United States,
3 Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.

4 5. The Clerk of Court must issue summons to the United States Attorney for the
5 District of Nevada and deliver the summons and complaint to the U.S. Marshal for service.

6 6. By December 13, 2019, Plaintiff must file an amended complaint stating the
7 correct date upon which the Appeals Council denied her request for review. If this date is more
8 than 65 days before Plaintiff filed this action, Plaintiff must also file a notice with the court so
9 stating.

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11 DATED: November 18, 2019

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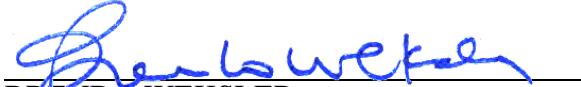
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BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE